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PACIFIC DATA SYSTEMS, INC.

OFFICE OF PUBLIC ACCOUNTABILITY

PROCUREMENT APPEALS

IN THE APPEAL OF
TELEGUAM HOLDINGS LLC and its WHOLLY OWNED SUBSIDIARIES, GTA TELECOM LLC; GTA SERVICES LLC and PULSE MOBILE LLC,

Appellants.

OPA Docket No. OPA PA 12-018

REPLY OF PACIFIC DATA SYSTEMS, INC. TO GSA's MOTION TO DECLINE

I. INTRODUCTION

By Decision and Order dated August 8, 2014, the Hon. Arthur Barcinas vacated the Public Auditor's Decision in OPA-PA-12-018, and ordered the Public Auditor to issue a new Decision. On August 22, 2014, Pacific Data Systems, Inc. ("PDS") filed its Request that the Public Auditor hold a Scheduling Conference at its earliest convenience pursuant to the Superior Court's Decision and Order. The General Services Agency ("GSA") has opposed PDS' request for a Scheduling Conference, and requested the Public Auditor to decline further action in this matter.

II. ARGUMENT

GSA claims that this appeal may not proceed because of a pending judicial proceeding. However, 2 GAR Div. 4 § 12103(b) provides:

> (b) Effect of Judicial Proceedings. If an action concerning the procurement under Appeal has commenced in court, the Public Auditor shall not act on the Appeal except to notify the parties and decline the matter due to Judicial involvement. This Section

shall not apply where a court requests the decision of the Public Auditor ... (emphasis added)

In its Request for a Scheduling Conference, PDS attached a copy of Judge Barcinas' Decision and Order. On p. 27 of that Decision and Order, the Court stated "... The Public Auditor is hereby ORDERED to issue a new Decision, not inconsistent with this Decision and Order, in light of the new evidence. The trial date set for August 18, 2014 is hereby VACATED. This Court's jurisdiction is hereby STAYED during the pendency of the renewed proceeding before the Public Auditor ..."

GSA points to an appeal now pending in the Supreme Court relating to a different part of this ten part procurement, and states the Supreme Court has not requested the Public Auditor to make a decision regarding that case. That is true, but does not change the fact that the Superior Court ordered the Public Auditor to make a new Decision in OPA-PA 12-018. It is submitted that no one within the jurisdiction of the Superior Court may prudently ignore an Order from the Superior Court.

Oral argument in the Supreme Court appeal has now been set for October 22, 2014. *See* attached Notice. It may be anticipated that at least six months will elapse between now and a final resolution of the Supreme Court appeal.[1] On p. 21 of his Decision and Order, Judge Barcinas recognized that additional delay would be detrimental to the public policy interest in expeditious resolution of procurement disputes. There can be no doubt that the installation of the GGWAN system as soon as possible will be beneficial to the Government, and implementation of this part of the procurement has already been long delayed. Judge Barcinas is awaiting the Public Auditor's Decision, and freezing this matter as requested by GSA would be inconsistent both with Judge Barcinas' Decision and Order and the public interest in the expeditious resolution of this matter.

[1] The Supreme Court appeal relates to a different part of this procurement, and is solely limited to the issue of whether the trial court per Judge Sukola erred in requiring GTA to post a bond in a different civil action, CV0333-13. The Supreme Court decision thus can have no effect on the outcome of this matter.

III. CONCLUSION

PDS notes that 30 days has already passed since Judge Barcinas remanded this matter. PDS requests that the Public Auditor expeditiously rule that 2 GAR Div. 4 § 12103(b) is not applicable given the Superior Court Order requiring a new Decision from the Public Auditor in OPA-PA 12-018, and set a Scheduling Conference at its earliest convenience in order to comply with Judge Barcinas' Order.

DATED this 10th day of September, 2014.

Respectfully submitted,

BERMAN O'CONNOR & MANN
Attorneys for *PACIFIC DATA SYSTEMS, INC.*

By: _____
BILL R. MANN

IN THE SUPREME COURT OF GUAM

TELEGUAM HOLDINGS LLC and ITS Wholly Owned Subsidiaries **Plaintiff-Appellant.** vs. **TERRITORY OF GUAM, Department of Administration, General Services Agency, The Office of Public Accountability, Pacific Data Systems, Inc.,** **Defendants-Appellees**	Supreme Court Case No. CVA14-012 Superior Court Case No. CVA0333-13 **NOTICE OF ORAL ARGUMENT/ STATUS AND DISQUALIFICATION HEARING**

TO: Elyze M. Iriarte via court box#17; Fred Nishihira via court box#80; Bill R. Mann via court box#7; Anthony Camacho via court box #63

Please take notice that oral argument for the above-captioned matter is scheduled to be heard on **Wednesday, October 22, 2014** at **10:00 a.m., Northern Court Satellite,** before the panel of Chief Justice Robert J. Torres, Associate Justice F. Philip Carbullido and Associate Justice Katherine A. Maraman.

A status and disqualification hearing will be conducted at **9:00 a.m.** on **Monday, September 15, 2014**, in the Monessa G. Lujan Appellate Courtroom. Any questions regarding the disqualification of any justice, the scheduling of a particular hearing, the duration of arguments, and other administrative matters may be addressed at the hearing.

Dated this 8th day of September, 2014.

Hannah Gutierrez Arroyo
Clerk of Court